

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FREEMAN ALLEN FELDER,

Plaintiff,

v.

JOE LIZARRAGA, et al.,

Defendants.

No. 2:20-CV-0266-WBS-DMC-P

**FINDINGS AND RECOMMENDATIONS**

Plaintiff, a prisoner proceeding with retained counsel, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On July 24, 2020, the Court issued an order addressing the sufficiency of Plaintiff's pro se complaint. See ECF No. 8. The Court summarized Plaintiff's allegations as follows:

Plaintiff, Freeman Allen Felder, is an inmate at Mule Creek State Prison. Plaintiff names the following defendants: (1) Joe Lizarraga, Warden, (2) Patrick Covello, Warden, (3) H. Macias, Corrections Officer, (4) D. Martin, Corrections Officer, (5) Sergeant G. Knight, Corrections Sergeant, (6) Lieutenant E. Uhren, Corrections Lieutenant, (7) Sergeant J. Fisk, Corrections Sergeant, (8) D. Kang, Corrections Officer, (9) Sergeant L. Morris, Corrections Sergeant, (10) Lieutenant M. Allen, Corrections Lieutenant, (11) Lieutenant A. Ladson, Corrections Lieutenant, (12) Lieutenant M. Navarro, Corrections Lieutenant, (13) Lieutenant J. Neely, Corrections Lieutenant, (14) Lieutenant L. Mercado, Corrections Lieutenant, (15) B. Holmes, Chief Deputy Warden, (16) K. Green, Corrections Officer, (17) K. Wallace, Corrections Officer, and (18)

1 Lieutenant J. Ebeling, Corrections Lieutenant. Plaintiff requests punitive  
2 and compensatory damages from defendants in both their individual and  
official capacities.

3 Plaintiff claims that defendants Macias and Martin violated  
his Eighth Amendment rights by using excessive force. Plaintiff alleges  
4 that on May 25, 2018, two drunk inmates started an argument with  
plaintiff and began throwing punches at plaintiff. Plaintiff claims that  
5 Officer Martin then threw a blast grenade at plaintiff and the other two  
inmates from six feet away. Plaintiff alleges that the grenade exploded  
6 inches from his foot and left a puncture wound. Plaintiff also alleges that  
defendant Officer Macias began firing direct impact rounds towards  
7 plaintiff and the other two inmates. Plaintiff claims that all four rounds  
struck plaintiff and none of the rounds struck his attackers. Plaintiff claims  
8 he suffered a distal fracture in his kneecap, a patellar fracture, a hematoma  
over his sternum, a lung contusion, and multiple abrasions as a result of  
the grenade and the direct impact rounds.

9 Plaintiff also claims that Officer Macias, Officer Martin,  
and Officer Wallace violated his Eighth Amendment rights by failing to  
10 protect plaintiff from threats to his safety. Plaintiff alleges that the two  
inmates who started an argument with plaintiff also harassed other inmates  
11 earlier in the day. Plaintiff claims that Officer Macias, Officer Martin, and  
Officer Wallace observed the inmates' erratic behavior and allowed it to  
12 persist. Plaintiff further alleges that Officer Macias, Officer Martin, and  
Officer Wallace watched the inmates harass and taunt plaintiff with insults  
13 and racial epithets. Plaintiff claims that had the officers intervened,  
plaintiff would not have been attacked by defendants. Plaintiff also alleges  
14 that Officer Macias and Officer Martin seemed amused by the inmates'  
treatment of plaintiff.

15 Plaintiff alleges that defendants violated his Sixth, Eighth,  
and Fourteenth Amendment rights to disciplinary proceedings. Plaintiff  
16 claims that the May 25, 2018 incident was a battery at the hands of the  
two inmates. See ECF No. 1, pg. 8. Plaintiff alleges that Officer Martin  
17 and Officer Macias nevertheless wrote plaintiff a Rules Violation Report  
for fighting. Plaintiff claims that Sergeant Knight and Sergeant Fisk  
18 reviewed the report prepared by Officer Martin and Officer Macias.  
Plaintiff also alleges that Officer Green was assigned to investigate the  
19 Rules Violation Report and failed to interview staff and inmate witnesses  
crucial to plaintiff's defense.

20 Plaintiff was found guilty at the hearing and appealed on  
the grounds of due process. Plaintiff claims that Lieutenant Ladson  
21 ordered the RVR reissued and reheard. Plaintiff alleges that Officer Kang  
was assigned to investigate the appeal. Plaintiff claims that Officer Kang  
22 prepared an incomplete RVR report. Plaintiff was found guilty on appeal.  
Plaintiff claims the appeal violated his constitutional rights due to an  
23 inadequate investigation and failure to interview critical witnesses.  
Plaintiff's complaint does not clearly establish whether plaintiff was not  
24 allowed at the administrative appeal hearing or if plaintiff's preferred  
witnesses were not allowed at the administrative appeal hearing. See ECF  
25 No. 1, pgs. 8-9. Plaintiff claims that Lieutenant Navarro was the officer of  
the administrative appeal hearing and that although Lieutenant Navarro  
26 acknowledged plaintiff was the victim of battery, he still found plaintiff  
guilty of fighting. Plaintiff alleges that Lieutenant Neely approved the  
27 results of the appeal.

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1 Plaintiff claims he appealed the finding again. Plaintiff  
2 alleges that defendant Mercado interviewed him for the second appeal and  
3 that defendant Ebeling denied the second appeal. Plaintiff claims that  
4 defendant Holmes reviewed the 602 process and defendant Lizarraga  
5 “validated the process”. Id. Finally, plaintiff alleges that as wardens,  
6 defendants Lizarraga and Covello oversee the daily operations of Mule  
7 Creek State Prison and therefore are responsible for its policies and  
8 procedures.

9 ECF No. 8, pgs. 2-4.

10 The Court found that Plaintiff states a cognizable Eighth Amendment excessive  
11 force claims against Officer Macias and Officer Martin. See id. at 4. The Court also found that  
12 Plaintiff states a cognizable Fourteenth Amendment due process claim against Officer Green  
13 based on Officer Green’s alleged refusal to interview witnesses that were crucial to Plaintiff’s  
14 case. See id. The Court otherwise found that Plaintiff’s complaint suffers from a number of  
15 defects, as follows:

16 . . . First, plaintiff has failed to allege a sufficient causal  
17 connection between the alleged constitutional violations and the actions of  
18 defendants (1) Lizarraga, (2) Sergeant Knight, (3) Lieutenant Uhren, (4)  
19 Sergeant Morris, (5) Sergeant Fisk, (6) Lieutenant Ladson, and (7)  
20 Lieutenant Mercado. Second, plaintiff has failed to allege sufficient facts  
21 to establish supervisor liability for defendants (1) Lizarraga, (2) Covello,  
22 (3) Chief Deputy Warden Holmes, and (4) Lieutenant Allen. Third,  
23 plaintiff has failed to state a cognizable Eighth Amendment threat to  
24 safety claim against Officer Macias, Officer Martin, and Officer Wallace.  
25 Fourth, plaintiff has failed to state a cognizable constitutional claim  
26 against defendants in respect to plaintiff’s disciplinary hearings and  
27 administrative grievance processes. Fifth, plaintiff cannot establish a  
28 cognizable Sixth Amendment claim for his disciplinary proceedings and  
administrative grievances processes because they are not criminal  
proceedings.

Id.

The Court then outlined specific findings. See id. at 5-14. Plaintiff was provided an opportunity  
to file a first amended complaint and advised that, if he did not do so, the case would proceed on  
the original complaint as to the cognizable claims against Defendants Macias, Martin, and  
Green. See id. at 14.

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1 On August 28, 2020, the Court granted Plaintiff's pro se request for a 60-day  
2 extension of time to file a first amended complaint. See ECF No. 10. On October 27, 2020,  
3 counsel appeared in the action on behalf of Plaintiff. See ECF No. 11. On the same day,  
4 Plaintiff's counsel requested a further 60-day extension of time. See ECF No. 12. On October  
5 30, 2020, the Court granted counsel's request. See ECF No. 13. On January 30, 2021, counsel  
6 sought a further 60-day extension of time to file a first amended complaint. See ECF Nos. 14  
7 and 15. The Court granted the request on February 3, 2021. See ECF No. 16.

8 To date, Plaintiff has not filed a first amended complaint. The Court therefore  
9 now recommends this action proceed on the cognizable claims against Defendants Macias,  
10 Martin, and Green identified in the Court's initial July 24, 2020, screening order and that all  
11 other claims and defendants be dismissed. By separate order the Court will direct service of the  
12 original pro se complaint on Defendants Macias, Martin, and Green.

13 Based on the foregoing, the undersigned recommends that:

14 1. This action proceed on the original pro se complaint on Plaintiff's Eighth  
15 Amendment excessive force claims against Defendants Macias and Martin and Plaintiff's  
16 Fourteenth Amendment due process claim against Defendant Green; and

17 2. All other claims and defendants be dismissed for failure to state a claim.

18 These findings and recommendations are submitted to the United States District  
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
20 after being served with these findings and recommendations, any party may file written  
21 objections with the Court. Responses to objections shall be filed within 14 days after service of  
22 objections. Failure to file objections within the specified time may waive the right to appeal.  
23 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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25 Dated: August 30, 2021

  
26 DENNIS M. COTA  
27 UNITED STATES MAGISTRATE JUDGE  
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